

CHAPTER 265

S.B. No. 395

An Act relating to certain requirements for eligibility for benefits and payments by reimbursing employers under the unemployment compensation laws; amending the Texas Unemployment Compensation Act, as amended, by amending Subsection (f), Section 3; Section 5; Subsection (b), Section 6; and Subsection (b), Section 7-A (Articles 5221b-1, 5221b-3, 5221b-4, and 5221b-5a, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (f), Section 3, Texas Unemployment Compensation Act, as amended (Article 5221b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

“(f) Equal Treatment: Benefits based on services for all employers in employment defined in subsection 19(f) shall be payable in the same amount, on the same terms, and subject to the same conditions; except that:

“(1) with respect to services in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be payable based on those services for any week commencing during the period between two (2) successive academic years or terms (or, when an agreement provides instead for a similar period between two (2) regular but not successive terms, during that period) to any individual if the individual performs those services in the first of the academic years (or terms) and if there is a contract or reasonable assurance that the individual will perform services in that capacity for any educational institution in the second of the academic years (or terms);

“(2) with respect to services in any other capacity for an educational institution:

“(A) benefits shall not be payable on the basis of those services to any individual for any week which commences during a period between two (2) successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform those services in the second of the academic years or terms; except that

“(B) if benefits are denied to any individual for any week under Paragraph (A) of this subdivision and the individual was not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of Paragraph (A); ~~and~~

“(3) with respect to any services described in *Subdivisions* [~~Paragraphs~~] (1) and (2), benefits shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess; *and*

“(4) *with respect to any services described in Subdivisions (1) and (2), benefits payable on the basis of those services shall be denied as provided by Subdivisions (1), (2), and (3) to any individual who performed those services in an educational institution while in the employ of an educational service agency, which for the purposes of this subdivision means a governmental agency or other governmental entity that is established and operated exclusively to provide those services to one or more educational institutions.*”

SECTION 2. Section 5, Texas Unemployment Compensation Act, as amended (Article 5221b-3, Vernon's Texas Civil Statutes), is amended to read as follows:

“*Section 5. DISQUALIFICATION FOR BENEFITS.* An individual shall be disqualified for benefits:

“(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly

benefit amount, unless the individual left work to move with a spouse from the area in which the individual worked. In that case, the disqualification shall be for not less than six (6) nor more than *twenty-five (25)* [~~twenty-six (26)~~] benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case. Provided no claimant shall be disqualified because of his or her leaving due to medically verified illness, injury, disability, or pregnancy and is still available for work. Military personnel who do not reenlist may not be considered to have left work voluntarily without good cause connected with work.

“(b) If the Commission finds he has been discharged for misconduct connected with his last work. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount.

“(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount.

“(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

“(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

“(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is (i) due to the claimant's stoppage of work because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (ii) because of a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed, and supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

“(1) He is not participating in or financing or directly interested in the labor dispute; provided, however, that failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept and perform his available and customary work at the factory, establishment, or other premises (including a vessel) where he is or was last employed shall be considered as participation and interest in the labor dispute; and

“(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; and where a disqualification arises from the employee's failure to meet the requirements of this paragraph (2) of this subsection (d) his disqualification shall cease if he shall show that he is not, and at the time of the labor dispute was not, a member of a labor organization which is the same as, represented by, or directly affiliated with, or that he, or such organization of which he is a member, if any, is not acting in concert or in sympathy with a labor organization involved in the labor dispute at the premises at which the labor dispute occurred, and he has made an unconditional offer to return to work at the premises at which he is or was last employed.

“(e) For any benefit period with respect to which he is receiving or has received remuneration in the form of:

“(1) Wages in lieu of notice;

“(2) Compensation for temporary partial disability, temporary total disability or total and permanent disability under the Workmen's Compensation Law of any State or under a similar law of the United States;

“(3) Old Age Benefits under Title II of the Social Security Act as amended, or similar payments under any Act of Congress, or a State Legislature; provided, that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration. If any such benefits, payable under this subsection, after being reduced by the amount of such remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

“(f) For a benefit period occurring from the date of the sale of a business until the date that an individual is employed and is eligible for benefits based on the wage credits received through the new employment, if:

“(1) the business is a corporation and the individual is:

“(A) an officer of the corporation;

“(B) a majority or controlling shareholder in the corporation; and

“(C) involved in the sale of the corporation;

“(2) the business is a limited or general partnership and the individual is a limited or general partner who is involved in the sale of the partnership; or

“(3) the business is a sole proprietorship and the individual is the proprietor who sells the business.

“(g) For the duration of any period of unemployment with respect to which the Commission finds that such individual has left his most recent work for the purpose of attending an established educational institution; provided, that this subsection shall not apply during a period in which an individual is in training with the approval of the Commission.

“(h) For weeks of unemployment beginning after March 31, 1980, for any benefit period with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of the individual and which is reasonably attributable to that benefit period; provided that if the remuneration is less than the benefits which would otherwise be due under this Act, the individual shall be entitled to receive for that benefit period, if otherwise eligible, benefits reduced by the amount of the remuneration. If those benefits payable under this subsection, after being reduced by the amount of the remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

“The Legislature declares that the preceding paragraph is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act as provided in Public Law 94-566 requires this provision in State law as of January 1, 1978, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act; and it further declares that if Section 3304(a)(15) is amended to provide modifications of these requirements, the modified requirements, to the extent that they are required for full tax credit, shall be considered applicable under the provisions of this Section rather than the provisions stated in the preceding paragraph.

“(i) This Section does not disqualify a claimant whose work-related reason for separation from employment was urgent, compelling, and of a necessitous nature so as to make separation involuntary.”

SECTION 3. Subsection (b), Section 6, Texas Unemployment Compensation Act, as amended (Article 5221b-4, Vernon's Texas Civil Statutes), is amended to read as follows:

“(b) An unemployed individual who has no current benefit year may file an initial claim in accordance with rules or regulations prescribed by the Commission. The Commission shall mail a notice of the filing of such initial claim to the individual or organization for which the claimant last worked prior to the effective date of the initial claim. If the individual or organization has more than one branch or division operating at different locations, notice of the filing of such initial claim shall be mailed to the branch or division where claimant last worked. Mailing of notice of the initial claim to the correct address of the individual or organization or the branch or division where claimant last worked shall constitute due notice to such individual or organization. A governmental employer may designate in writing to the Commission an address for mail service. When a governmental employer has so designated a mailing address, mailing of notice of claims, determinations, or other decisions to such address shall constitute due notice to the governmental employer. If the individual or organization to which such notice is mailed has knowledge of any facts that may adversely affect such claimant's right to benefits, or that may affect a charge to its account, it shall notify the Commission of such facts promptly. If such individual or organization does not mail or deliver such notification to the Commission within twelve (12) days from the date notice of a claim was mailed to it by the Commission, such individual or organization shall be deemed to have waived all rights in connection with such claim, including any rights it may have under subsection 7(c)(2) of this Act, except with respect to a clerical or machine error as to the amount of its chargeback or maximum potential chargeback in connection with such claim.

"The Commission shall determine whether such initial claim is valid. If such initial claim is valid, the Commission shall determine the benefit year, the benefit amount for total unemployment and the duration of benefits. A notice of the determination of the initial claim shall be mailed to the claimant at his last known address as reflected by Commission records. The claimant may within twelve (12) calendar days from the date such notice was mailed request a redetermination or appeal in the manner provided in this Section.

"If such individual or organization for which claimant last worked has filed a notification with the Commission in accordance with this Section, an examiner shall make a determination as to whether the claimant is disqualified from receipt of benefits under Section 5 (Article 5221b-3) of this Act, as to any other issue affecting the claimant's right to receive benefits which may have arisen under any other provision of this Act, and as to whether a chargeback shall be made to the account of the individual or organization if benefits are paid, and shall mail a copy of the determination to the claimant and to such individual or organization, or the branch or division for which the claimant last worked, or to the address for mail service designated by a governmental employer. In the absence of such notification from such individual or organization, if, from information on the claim or other information secured, an issue is raised affecting the claimant's rights to benefits under any provision of this Act, an examiner shall prepare a determination reflecting his decision and mail a copy of it to the claimant at his last known address.

"Unless the claimant or the individual or organization or branch thereof to which the copy of the determination is mailed files an appeal from such determination within twelve (12) calendar days after such copy of the determination is mailed to his or its last known address as reflected by Commission records, such determination shall be final for all purposes and benefits shall be paid or denied in accordance therewith; provided, that within the same period of time, an examiner may file an appeal from such determination, or may, if he discovers error in connection therewith or additional information not previously available, reconsider and redetermine any such determination, and such redetermination shall replace such determination and shall become final unless an appeal therefrom is filed by such claimant or such individual or organization within twelve (12) calendar days after a copy of such redetermination was mailed to his or its last known address as reflected by Commission records.

"Notwithstanding any provision in this Act under which benefits may be paid or denied, benefits shall be paid promptly in accordance with a determination or redetermination of an examiner, a decision of an appeal tribunal, the Commission, or a reviewing court, on the issuance of that determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review, or the pendency of that application, filing, or petition), unless and until that determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied in accordance with the modifying or reversing redetermination or decision. If a determination or decision is finally modified or reversed to deny benefits, no chargeback shall be made to the employer's account by reason of payments made to the claimant for any benefit period with respect to which he is finally denied benefits [~~or if the last employer is a reimbursing employer, and the modification or reversal occurred before the employer was billed for the benefits subject to the modification or reversal, then the last employer shall not be billed for reimbursements with respect to such benefits~~]. Any benefits paid to the claimant which were not in accordance with the final decision shall be refunded by the claimant to the Commission or in the discretion of the Commission shall be deducted from future benefits payable to him under this Act, and the amount of benefits paid which were not in accordance with the final decision shall also be collectible in the manner provided in Section 14(b) of this Act for the collection of past due contributions."

SECTION 4. Subsection (b), Section 7-A, Texas Unemployment Compensation Act, as amended (Article 5221b-5a, Vernon's Texas Civil Statutes), is amended to read as follows:

"(b) Payments by a Reimbursing Employer: At the end of each calendar quarter the Commission shall bill each reimbursing employer for an amount equal to the amount of the regular benefits plus one-half (1/2) of the amount of the extended benefits paid during such quarter which are attributable to service in the employ of such employer, and reimbursements shall be paid by the reimbursing employer to the Commission for the fund in accordance with such rules as the Commission shall prescribe. ~~[An employer which has elected to pay reimbursements under Section 8(b)(1), 8(b)(2), or 8(b)(3) of this Act shall also pay, in accordance with such rules, an amount equal to Thirty Dollars (\$30) for each initial claim which is ultimately found to be valid submitted to the Commission. Amounts so received shall be deposited in the Unemployment Compensation Administration Fund, and shall constitute fees for coverage and administration under such elections.]~~"

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on February 25, 1985, by the following vote: Yeas 30, Nays 0;
passed the House on May 16, 1985, by a non-record vote.

Approved: June 5, 1985

Effective: August 26, 1985